

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LOWRITA RICKENBACKER,

Plaintiff,

-against-

ANSWER
CV-05-5941
(ADS)(ETB)

UNITED STATES OF AMERICA, et.al.

Defendants.

-----X

Defendant United States of America¹, by its attorney, ROSLYNN R. MAUSKOPF, United States Attorney for the Eastern District of New York, Diane Leonardo Beckmann, Assistant U.S. Attorney, of counsel, hereby answers the correspondingly numbered paragraphs of the plaintiff's complaint upon information and belief as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the residence of the Plaintiff contained in paragraph "1" of the Complaint.

2. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

¹ By Memorandum and Order dated November 7, 2006, the Court dismissed the causes of actions against the individual defendants and the Federal Correctional Institution at Danbury, CT. The remaining cause of action is a purported claim under the Federal Tort Claim Act against the United States of America.

3. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

4. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

5. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

6. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

7. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

8. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this

paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

9. The causes of action against the individual defendants have been dismissed and there is no response necessary from the Defendant. To the extent that this paragraph can be construed to support a claim under the Federal Tort Claim Act, the defendant denies any factual allegations.

10. Defendant denies each and every allegation in the complaint under the section entitled “B. Nature of Case.”

11. Defendant denies the allegations in the complaint under the section entitled “C. Claim.” Defendant further avers that these claims were dismissed pursuant to the Court’s Memorandum and Order dated November 7, 2006. To the extent that these allegations can be construed to support a claim under the Federal Tort Claim Act, Defendant denies each and every allegation contained in subsection (A)(1) and (2); (B)(1) and (2); (C)(1) and (2) and (D)(1) and (2).

12. No response is necessary to paragraph “1” of the section entitled “D. Previous Lawsuits and Administrative Relief.”

13. Defendant denies that Plaintiff complied with the administrative claim process. Defendant admits that Plaintiff timely filed an administrative claim, but Defendant further avers that Plaintiff failed to timely commence suit within the District Court as required by the Federal Tort Claim Act, 28 U.S.C. § 2401(b).

14. To the extent the allegations contained in the final paragraph entitle “E. Request for Relief” constitute plaintiff’s prayer for relief, no response is necessary. To the extent that this portion of the plaintiff’s Complaint may be deemed to contain

allegations of fact, however, they are denied.

AS AND FOR A FIRST DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

Plaintiff failed to exhaust administrative remedies.

AS AND FOR A THIRD DEFENSE

Plaintiff failed to timely file this action.

Dated: Central Islip, New York
November 16, 2006

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York
610 Federal Plaza, 5th Floor
Central Islip, New York 11722

/s/Diane Leonardo Beckmann
BY: Diane Leonardo Beckmann (3276)
Assistant U.S. Attorney
(631) 715-7854

TO: Lowrita Rickenbacker
Plaintiff Pro Se
570 Clocks Blvd.
Massapequa, New York 11758